

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

LAWRENCE PARK APARTMENTS,

Plaintiff-Appellee,

vs.

Case No. 2006-0521-AV

BARBARA SCAFONE,

Defendant-Appellant.

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OPINION AND ORDER

Defendant Barbara Scafone appeals as of right from a Judgment entered January 23, 2006 in the 37<sup>th</sup> Judicial District Court (Case No. 2005-6815-LT, Hon. Walter A. Jakubowski, Jr.) granting plaintiff Lawrence Park Apartments possession of the leased premises.

I. BACKGROUND

Plaintiff filed the underlying action on July 29, 2005 asserting defendant rented an apartment from it located at 24782 Laura Court (Center Line). Plaintiff averred defendant's smoke detectors had been disabled and her fire extinguisher—for the second time—had been used but not reported. Accordingly, plaintiff sought to terminate defendant's tenancy.

On November 15, 2005, plaintiff moved for summary disposition. Plaintiff contended defendant's actions constituted material noncompliance with the Lease Agreement that justified termination of the lease. The trial court found no genuine issue of material fact existed and issued an *Opinion and Order* granting plaintiff's motion; Judgment was entered January 23, 2006 granting plaintiff possession of the leased premises.

Defendant now appeals.



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## II. STANDARD OF REVIEW

Factual findings of a district court are reviewed under the clearly erroneous standard. MCR 2.613(C). In determining whether a district court's findings of fact are clearly erroneous, the special opportunity of the trial court to judge the credibility of parties and witnesses must be considered. *Id.* A finding of fact is clearly erroneous, even if there is some evidence to support it, when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Contel v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990).

A trial court's ruling on a motion for summary disposition and questions of law are subject to de novo review. *Van Buren Charter Township v Garter Belt, Inc.*, 258 Mich App 594, 602; 673 NW2d 111 (2003).

## III. ANALYSIS

Defendant raises several issues on appeal, none of which merit reversal.

### A. Material Noncompliance

Defendant acknowledges being subject to the Lease Agreement, which provides in pertinent part:

14. **Rules:** The TENANT agrees to obey the House Rules (see Attachment No. 3). \* \* \*

23. **Termination of Tenancy:**

d. The LANDLORD may terminate this Lease Agreement for the following reasons:

(1) the TENANT's material noncompliance with the terms of this Lease Agreement....

The term "material noncompliance" with the Lease Agreement includes:

(1) one or more substantial violations of the Lease Agreement; (2) repeated minor violations of the Lease Agreement that are (a) disrupting to the livability of the project, (b) adversely affecting the health or safety of any person....

24. **Hazards:** The TENANT shall not undertake, or permit TENANT's

family or guests to undertake, any hazardous acts or to do anything that may increase the project's insurance premiums. Such action constitutes a material noncompliance. \* \* \*

TENANT acknowledges that the LANDLORD has installed a smoke detector in the leased premises.... TENANT agrees not to obstruct or tamper with any detector supplied by LANDLORD. TENANT further agrees to promptly report any malfunction to the Management Office.

Shall any detector become damaged either by accidental or deliberate misuse or abuse, or is removed or any component thereof removed, by the TENANT, or any other occupant, guest, or invitee of the TENANT or other occupants \* \* \* [s]uch action by a TENANT, other occupants, guests or invitees may also result in eviction proceedings by the LANDLORD.

If a smoke detector is battery operated \* \* \* TENANT understands that it is the TENANT's responsibility to replace the battery or to request management to replace it periodically in order to cause the smoke detector to continue to operate.

Attachment No. 3 states "[n]othing shall be done in or about the building which will interfere with the rights, comforts, or convenience of other TENANTS."

In support of its motion for summary disposition, plaintiff proffered evidence that all three of the smoke detectors in defendant's apartment—which had been in working order when inspected in June 2004—had been disabled by June 2005 because component parts had been removed (the two battery-operated smoke detectors were missing their batteries while the one hard-wired smoke detector had been disconnected from its power source and was missing its battery). In addition, plaintiff submitted evidence that the fire extinguisher had to be recharged in June 2004 and had been totally discharged in June 2005.

In response, defendant noted the mere fact that her fire extinguisher had to be recharged in June 2004 does not establish it was empty (i.e., had to be re-filled as opposed to re-pressurized or was re-filled for other than maintenance purposes). Defendant also noted the smoke detectors had not been damaged and were easily put in working order. Therefore, defendant disputed

having committed any material or substantial lease violations.

As a preliminary matter, defendant correctly notes the record is less than clear as to the condition of the fire extinguisher in June 2004. The fire extinguisher's need to be "recharged" in June 2004 does not definitively establish it had been used and emptied.

Defendant also correctly notes the smoke detectors apparently had not been damaged. However, the smoke detectors were disabled as a result of having their component parts removed—all three were missing their batteries and the hard-wired detector had also been removed from its power source. Such actions also effectively constituted removal of the smoke detectors and violated defendant's responsibility to maintain batteries in the detectors. Hence, plaintiff was justified in seeking defendant's eviction under ¶ 24 of the Lease Agreement.

Moreover, disabling the smoke detectors represented a hazardous act that could increase the project's insurance premiums and directly interfered with the safety of the other tenants. As such, these actions materially and substantially violated the terms of the Lease Agreement. Hence, plaintiff was justified in seeking defendant's eviction under ¶¶ 23 and 24 of the Lease Agreement.

Significantly, defendant did not establish she was being singled out for eviction. While other units also had some violations when inspected in June 2005, *only defendant's* unit had all three of its smoke detectors disabled and had an inoperative fire extinguisher; she was not similarly situated to other renters. Hence, and given the serious nature of these violations, plaintiff was not precluded from seeking to evict defendant.

Therefore, the trial court did not err in granting plaintiff's motion for summary disposition.

#### IV. CONCLUSION

For the reasons set forth above, the Judgment entered January 23, 2006 in the 37<sup>th</sup> Judicial District Court granting plaintiff Lawrence Park Apartments possession of the leased premises is AFFIRMED.

This Opinion and Order resolves the last pending claim in this matter and closes the case.  
MCR 2.602(A)(3).

IT IS SO ORDERED.



Honorable Mary A. Chrzanowski P39944  
Circuit Court Judge

Dated: **MAY 30 2006**

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**A TRUE COPY**

**Carmella Sabaugh**

COUNTY CLERK

BY



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